

UNREDACTED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

JESSICA JONES, MICHELLE  
VELOTTA, and CHRISTINA  
LORENZEN on behalf of  
Themselves and All others  
Similarly Situated,

VS

)  
)  
)  
) NO.2:20-CV-02892  
) JACKSON, TENNESSEE  
)  
)

VARSITY BRANDS, LLC;  
VARSITY SPIRIT, LLC; VARSITY  
FASHIONS & SUPPLIES, LLC;  
U.S. ALL STAR FEDERATION,  
INC.; JEFF WEBB;  
CHARLESBANK CAPITAL  
PARTNERS, LLC; and BAIN  
CAPITAL PRIVATE EQUITY;

EXPEDITED TRANSCRIPTION

VIA FTR RECORDING

NOVEMBER 19, 2021

BEFORE THE HONORABLE TU PHAM,

UNITED STATES MAGISTRATE JUDGE

KRISTI HEASLEY, RPR  
OFFICIAL COURT REPORTER  
U.S. COURTHOUSE, SUITE 450  
111 SOUTH HIGHLAND AVENUE  
JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

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EXAMINATION INDEX  
NO TESTIMONY OFFERED

UNREDACTED TRANSCRIPT

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EXHIBITS

NO EXHIBITS MARKED

1 THE COURT: Afternoon everyone.

2 Judge Pham. Here to conduct a hearing in  
3 case of Jones versus Varsity Brands and other  
4 codefendant, Case No. 20-cv-02892.

5 I will depend on the parties to let me  
6 know if we are waiting for anyone to connect. It's a  
7 little after 2:00 o'clock. But is there someone who  
8 needs to be here that isn't here yet?

9 MS. SCHWARZ: Ashlea Schwarz for  
10 plaintiffs. I believe we have everyone we need on our  
11 side, Your Honor.

12 THE COURT: Okay.

13 MR. KAISER: Your Honor, for defendants  
14 Charlesbank, Bain and the Varsity defendants, we are all  
15 present and ready to proceed.

16 THE COURT: Okay. So let's get a -- just  
17 for purposes of -- I'll have the parties who are on the  
18 video session state their names for the record.

19 On behalf of the plaintiffs, who are the  
20 attorneys here?

21 MS. SCHWARZ: Ashley Schwarz on behalf of  
22 plaintiffs.

23 MS. MALONE: Katherine Malone on behalf of  
24 the plaintiffs as well.

25 THE COURT: And then that's it. For the

1 defendants.

2 Mr. Kaiser, you already introduced  
3 yourself with Varsity Brands and Charlesbank and Bain.

4 MR. KAISER: That's correct, Your Honor,  
5 yes.

6 THE COURT: Okay. Then who else?

7 MR. MULQUEEN: Afternoon, Your Honor.  
8 Matt Mulqueen also on behalf of the Varsity defendants,  
9 Bain and Charlesbank.

10 MS. BERKOWITZ: Afternoon, Your Honor.  
11 I'm Nicole Berkowitz. I'm here on behalf of defendant  
12 U.S. All Star Federation.

13 THE COURT: Okay. And I think someone's  
14 of microphone is off. Mr. Gaffney, looks like your --

15 MR. GAFFNEY: Brendan Gaffney. I'm here  
16 on behalf of defendant Jeff Webb. Good afternoon.

17 THE COURT: Good afternoon.

18 MR. STANTON: Afternoon, Your Honor. Ed  
19 Stanton here, also on behalf of defendant Jeff Webb.

20 THE COURT: Good to see you again, Mr.  
21 Stanton. It's been a while.

22 MR. STANTON: Yes, it has been, Your  
23 Honor. Good to see you.

24 THE COURT: Then who else?

25 MR. KAISER: We have other people who,

1 for -- example, Nico Banks from my office. Although, he  
2 has not actually entering an appearance, he is on the  
3 call.

4 THE COURT: Okay. That's fine. I assume  
5 there is -- I have my staff also on the call here as  
6 well.

7 Okay. Then unless anyone else has to  
8 chime in --

9 MR. SUTTER: Your Honor, good afternoon.  
10 This Mark Sutter from Burger Montague on behalf of the  
11 Fusion Elite All Star plaintiffs.

12 THE COURT: Okay. All right. Well, let's  
13 go ahead and get started.

14 So I got that email yesterday regarding  
15 some of the issues here raised that we're going to  
16 address with Varsity. And it sounded like in the email  
17 that those parties were able to resolve all their  
18 disputes, which is great. But I think in that email  
19 y'all had asked to be excused from participating, at  
20 least as it relates to those issues.

21 And I did want to just quickly touch upon  
22 that motion and those issues to see if there is anything  
23 that the Court needed to do.

24 I don't know if the parties anticipated,  
25 anticipated submitting a proposed order resolving, or

1 whether the motion was being withdrawn as to those  
2 parties. I just wasn't clear on that. So I wanted to  
3 hear from you all on that.

4 And then whoever is on that matter, if you  
5 want to disconnect from the call then you can.

6 MR. KAISER: Our understanding, Your  
7 Honor, is that we resolved these by agreement, and that  
8 no further action by the Court is needed. I guess for a  
9 housekeeping measure, that would mean technically the  
10 motion is withdrawn. But, obviously, we are going to  
11 follow through on what we agreed to do.

12 MS. MALONE: Yeah. Just to follow up. We  
13 would be happy to submit a proposed order reflecting the  
14 terms that we came to.

15 THE COURT: Okay. So I'm glad I raised  
16 that, because two different things there. Right? If  
17 there is a -- I hope there was a meeting of the minds and  
18 I disrupt things here.

19 But on the one hand, if there is a motion  
20 that the parties have resolved and want the terms of that  
21 agreement memorialized in a court order with the  
22 authority of the Court to impose any sanctions, I  
23 suppose, I'm not inviting that. But to have the force of  
24 any order, that's one thing.

25 If it's that you're withdrawing the motion



1 in light of this agreement, and then there is nothing for  
2 the Court to resolve or enter, that could be something  
3 very, very different.

4 MR. KAISER: Your Honor, we spent weeks  
5 and months negotiating this. Certainly, having a court  
6 order at the end of it was not a part of that  
7 negotiation. I would say that if that is what the  
8 plaintiffs have in mind, they should have raised it a  
9 long time ago. Furthermore, it will only serve to  
10 complicate the issue.

11 We know what we're supposed to do. We're  
12 going to go off and do it. And I think really the right  
13 thing to happen here is the motion should just be denied  
14 as moot.

15 THE COURT: Ms. Malone.

16 MS. MALONE: Well, if defendants -- you  
17 know, it's a (inaudible). I have no doubt that they  
18 will. I'm not really sure what the downside of a  
19 proposed order memorializing the terms of the agreement  
20 are, so that's our preference.

21 MR. KAISER: The downside is that multiple  
22 times in negotiations the defendant -- the plaintiffs  
23 have changed their position after agreements were made.  
24 And I fear that if you give them another opportunity,  
25 they'll, once again, change their position. And then

1 we'll be back before you arguing about what they agreed  
2 to versus what they submitted as a order. We'll be doing  
3 this for the next two months.

4 I just think that is a terrible use of  
5 resources in a case that is already far too  
6 resource-intensive. I would object to that. I think the  
7 motion should just be denied as moot.

8 That was the agreement as we understood it  
9 and we're ready to go.

10 MS. MALONE: I mean, the agreement was  
11 memorialized in writing and it's fairly clear. I think  
12 it would be relatively easy to just copy and paste into a  
13 proposed order and do the reformatting.

14 So, again, we disagree. And I think just  
15 as a housekeeping matter, it would be preferable to have  
16 it in writing. And then that would also address your  
17 concerns about any ambiguities or disputes that may arise  
18 in the future.

19 MR. KAISER: That just --

20 THE COURT: Hold on a second.

21 When you say my concern, your concern,  
22 were you talking to Mr. Kaiser or the Court?

23 MS. MALONE: Sorry. I was talking to  
24 Mr. Kaiser.

25 Your Honor, I think actually it would

1 smooth this out. You know, we certainly don't want to  
2 bring unnecessary motions before you. That's part of why  
3 we came to this agreement. And so the benefits of  
4 memorializing this in a way that every one is clear on, I  
5 think outweigh whatever concerns the Varsity defendants  
6 have.

7 THE COURT: Okay. So I'm glad we had  
8 this, because that was a question I had. I wasn't clear,  
9 based on that short email I received, what the parties'  
10 expectations were as far as the end product, the end  
11 result of that, whether it was just a private agreement  
12 resolved and the motion would be denied as moot, as being  
13 withdrawn by, as being withdrawn, or whether the parties  
14 anticipated having the Court enter an order memorializing  
15 the parties' agreement in an order, I suppose.

16 And I don't know whether -- it doesn't  
17 matter to me whether it's phrased as a motion, as an  
18 order granting the motion or denying it, or rather just  
19 an order regarding, so no one wins or loses.

20 But I think that was my question, which I  
21 think has been answered. Which is, y'all have not agreed  
22 on how to ultimately resolve the motion insofar as an  
23 order versus withdrawing the motion.

24 MR. KAISER: Well --

25 MS. MALONE: It wasn't contemplated in our

1 discussions in our agreements, but yeah.

2 MR. KAISER: Judge Pham, she submitted --  
3 Ms. Malone submitted something to the Court that says,  
4 that the plaintiffs and the Varsity defendants have  
5 successfully resolved the outstanding discovery disputes  
6 outlined in ECF No. 100, which is the motion we're  
7 talking about.

8 And then goes on to say, the parties would  
9 like to request the Court take this motion off calendar  
10 for the November 19, 2021 hearing.

11 So I don't know what better evidence there  
12 is than -- what we did was resolve the outstanding  
13 discovery disputes and, therefore, the motion is moot.

14 Now, obviously, they're trying to get  
15 something here, which is some sort of order that they can  
16 then say we're in contempt of down the line. That is not  
17 what we agreed to. And I don't know that we have an  
18 agreement then.

19 It would be unfortunate for this to hang  
20 up on this issue. But Ms. Malone said, well, I can just  
21 cut and past what we already have. And then she said,  
22 but it would be good to have more clarity.

23 Well, those two thing are not consistent  
24 with one another. I believe we have clarity. There is  
25 no need to get, involve the Court in this at this point

1 because we resolved it.

2 We gave up a lot of things that we would  
3 not have to avoid Court involvement. And now it seems  
4 like we're getting pushed into Court involvement, which  
5 is not appropriate.

6 THE COURT: Okay. Well, I don't know --  
7 it sounds like this is not an issue that y'all have seen  
8 eye to eye on. And perhaps with further discussion  
9 between the two of you, there could be some agreement  
10 about the agreement insofar as how to resolve this motion  
11 and the form in which it should be resolved.

12 So rather than taking up all the parties'  
13 time on that, why don't you all just have an off line  
14 conversation, and then try to work it out. And if you  
15 can't, then I can have just those parties on a separate  
16 call next week to resolve it, if you all can't resolve  
17 the form in which the motion should be resolved. Okay?

18 But I did have a question, though.  
19 Insofar as the term, the one issue that came up was the  
20 time frame, the relevant time period. And I was curious  
21 and interested to know -- again, I assume I'm not asking  
22 either side to violate the agreement to disclose what it  
23 is y'all agreed to regarding time frame.

24 That seems to be a recurring theme in this  
25 case, so just wanted to raise that.

1 Go ahead, Ms. Malone.

2 MS. MALONE: Yes. So, yes, Your Honor,  
3 we -- as to the time period, we agreed the January 1st,  
4 2015, date to June 30th, 2020, because Judge Claxton had  
5 told us it was the Court's position that plaintiffs were  
6 capped at the front end there. And that was the Court's  
7 position and believed as to what was appropriate. So we  
8 took that guidance and used that as a benchmark.

9 THE COURT: So January 2015 to December  
10 2020?

11 MR. KAISER: June 30th, 2020.

12 MS. MALONE: June 30th, 2020. Yes, Your  
13 Honor.

14 THE COURT: Okay. All right. So I guess  
15 the parties involved in that portion of the hearing today  
16 can just talk to each other and see if you can agree what  
17 the right approach should be. And then you can let me  
18 know here, let's say, Monday by 5:00 o'clock whether you  
19 have agreed to the form in which the case, that that  
20 motion be resolved.

21 If you tell me it's not been resolved,  
22 I'll go ahead and set this for a separate hearing. And  
23 I'll invite everyone, but it's really just for those who  
24 are involved in this particular motion that would be  
25 asked to attend, to see if I can help you resolve that

1 dispute. Okay?

2 Anything else on that motion, those  
3 issues?

4 MS. MALONE: No, Your Honor, not from the  
5 plaintiffs. Thank you.

6 THE COURT: Okay. All right. So for  
7 those -- if there is any attorneys that's limited to  
8 that -- whoever wants to remove themselves from the call,  
9 they can. I'm not going keep you to this.

10 Let me move on quickly the to Webb  
11 proposed orders here. I had gotten the dueling versions  
12 from the parties after the hearing before Judge Claxton.  
13 Some variation, but it appears that the one about  
14 plaintiffs seeking documents for earlier time period  
15 based upon a good cause showing is still an option, looks  
16 like from the plaintiff's version. And the defense  
17 doesn't have that.

18 MR. KAISER: Yes, Your Honor.

19 THE COURT: So there is a bit of a  
20 difference there. So I wanted to talk to the Webb  
21 parties on the different versions and which one I should  
22 be entering.

23 MS. SCHWARZ: This is Ashlea Schwarz for  
24 the plaintiffs. I think that's spot on. The only issue  
25 we have is in the hearing, Judge Claxton did say that she

1 thought that was the appropriate time frame. But, of  
2 course, if there was discovery or some reason down the  
3 road to come back, that she would entertain additional  
4 argument, if we believed that a further time period is  
5 necessary.

6 So I think while we're in agreement on the  
7 time period, we would just like the order to reflect that  
8 we do have that right from the prior ruling to come back,  
9 should the need arise.

10 THE COURT: Any response?

11 MR. GAFFNEY: Yes, Your Honor. I think as  
12 for Defendant Webb, Judge Claxton was quite clear on the  
13 time frame going from January 1st, 2015, to December of  
14 2021.

15 The additional language that plaintiffs  
16 propose we find to be unnecessarily superfluous. While  
17 Judge Claxton, her exact words during the hearing were,  
18 quote, you know, free to argue down the line if something  
19 comes up in discovery that indicates some, you know, real  
20 need to go back further, end quote.

21 And the very next sentence she followed  
22 that up with, but I'm going to stand pat on the  
23 January 1st, 2015, time frame.

24 It certainly did not include a reference  
25 to being able to seek an expanded time period just for



1 good cause, as is stated in plaintiff's proposed order.  
2 And she also -- I would also say that, including the  
3 additional language, and Judge Claxton's comments, I  
4 would say that was akin to last Friday when we were  
5 before you and the order granting plaintiff's joint  
6 motion to facilitate coordination of depositions and  
7 related actions.

8 As you recall, the plaintiff sought up to  
9 11 hours in deposition time, which was granted. And you  
10 advised on the record -- and I'm just paraphrasing, not  
11 to quote -- that if it were to come up that that extended  
12 time period is being abused or, you know, being --  
13 parties are being asked unnecessarily duplicative  
14 questions, then defendants could seek relief from the  
15 Court.

16 You know, that didn't need to be, that  
17 didn't need to be put in the order. And I just think  
18 this is similar. And the fact that plaintiffs can seek  
19 relief from the Court if they have some very real need to  
20 go back further that comes up in discovery, they know how  
21 to do that without that having to be expressly written  
22 into an order.

23 THE COURT: Okay. Well, I guess the  
24 difference then is simply something that, I suppose, any  
25 party could re-raise with the Court, if there is

1 additional information that comes to light that is a  
2 basis and is material for the Court to consider in  
3 reevaluating, reconsidering a prior ruling. I suppose  
4 that's always an option, regardless of what the language  
5 of the order says.

6 But it seems like from reviewing the  
7 transcript with Judge Claxton, that that was the time  
8 frame that she had in mind. And it also sounds pretty  
9 consistent with what -- sorry. I'm getting some -- Mr.  
10 Turner. Mr. Turner. Hello. Okay. Thank you.

11 But perhaps it looks like, given what  
12 Judge Claxton had previously ruled, that it would be, the  
13 defense version on that would be consistent. As with  
14 anything, I suppose, if there is additional information  
15 comes to light, and there is a basis for the Court to  
16 reevaluate, then I suppose that's always an option  
17 anyway.

18 What about the other differences here?

19 MR. GAFFNEY: The only other difference,  
20 we actually resolved. And it was -- the only material  
21 difference was plaintiff's version had said that  
22 production pursuant to that order shall be substantially  
23 completed not later than 30 days from entry of the order.  
24 And the version that Mr. Webb proposed, that we proposed  
25 on behalf of Mr. Webb, said 45 days. And the parties

1 have agreed on the 45 days.

2 THE COURT: Okay. What about this, at  
3 least 14 day prior to deposition, that was in the  
4 plaintiff's version. Is that in here?

5 Plaintiff version says 30 days prior to  
6 order, and at least 14 days before deposition for  
7 Mr. Webb.

8 MR. GAFFNEY: In all reality, based on  
9 scheduling, I don't know that Mr. Webb's deposition would  
10 be taking place within 45 days, in any event. So I don't  
11 know that that language matters to plaintiffs, unless they  
12 say otherwise.

13 THE COURT: Ms. Schwarz.

14 MS. SCHWARZ: Well, the language matters  
15 to us. Depends on when the -- let me say this. If it's  
16 a rolling production and we don't have all the documents,  
17 and we have a beginning of documents 45 days from now,  
18 but not a conclusion of it, that's the only time I can  
19 see that would become an issue, is if the whole  
20 production couldn't be done in 45 days.

21 I don't know that to be the case. I just  
22 think -- that's the issue, is we want to have a cut off,  
23 so that if we're getting ready for depositions, it's not,  
24 well, we provided some, but we get dumped with majority  
25 of it later down the road.

1 MR. GAFFNEY: It will be substantially  
2 complete in 45 days pursuant to the order, so it  
3 wouldn't -- there wouldn't be a dump within 14 days of  
4 the, of the deposition.

5 THE COURT: I guess theoretically if there  
6 are documents produced three days before his deposition,  
7 that's a concern, even if it's a smaller amount.

8 Yeah. Then I certainly appreciate the  
9 parties trying to cut off any problems down the road, but  
10 I'm not sure this one -- what to do.

11 It seems to me here the defendant's  
12 version is pretty straight forward. I guess, of course,  
13 if it's produced two or three days beforehand, and it's  
14 100 documents, versus 50, you could reschedule the  
15 deposition, which the parties would not be very happy  
16 with, I image, with Mr. Gaffney producing it when  
17 everyone is trying to coordinate these things. So I  
18 assume that's not going to be a problem.

19 Okay. Anyone else wish to be heard about  
20 these competing versions before we move on? Okay.

21 MS. SCHWARZ: Not from the plaintiffs,  
22 Your Honor.

23 THE COURT: All right.

24 MR. GAFFNEY: Not from --

25 THE COURT: I'll enter the defense

1 versions then that was submitted. And we'll get that  
2 docketed today.

3 So let's see what is next on my list.

4 Well, I guess, the next one is the  
5 Charlesbank and Bain parties.

6 I did get your email raising the,  
7 addressing the disputes. And it appears that the Bain  
8 and Charlesbank defendants' position, in light of what  
9 occurred before Judge Claxton, and their review of Judge  
10 Lipman's order, feel that discovery should not proceed as  
11 to those defendants until the Court rules on the motion  
12 to dismiss as to them.

13 Is that where you all are at on that?

14 MR. KAISER: That is definitely where  
15 Charlesbank and Bain are. And as you pointed out, that's  
16 where Judge Claxton was.

17 THE COURT: Okay. Plaintiffs.

18 MS. SCHWARZ: Your Honor, we -- yes, that  
19 was where Judge Claxton was.

20 I would like to preface with, she  
21 didn't -- at the hearing, it was three weeks ago, and the  
22 order had just come down in the American Spirit case.  
23 And she didn't hear any argument or any -- didn't open it  
24 up for even do we agree -- obviously, we don't agree that  
25 the motion to dismiss is going come out the same way when

1 you have different counsel, different complaints.

2 Her presumption was that our complaints  
3 were identical, and our complaints were identical, and  
4 that's not correct. And so I would just like the Court  
5 to know that there was no discussion, no argument. It  
6 was not a ruling that we weren't going to, she just  
7 deferred it, saying, I think it's coming soon, so I'm  
8 going to put it off to see if it happens. That was over  
9 three weeks ago.

10 Obviously, their position hasn't changed,  
11 that there is no negotiations, there is no productions  
12 that are going to happen.

13 For us the issue is, again, it's been  
14 three weeks and we haven't seen an order from the Judge.  
15 We don't know when that's coming. Depositions are going  
16 on where Charlesbank and Bain are referenced and  
17 discussed, and we are hamstrung with having no discovery.

18 We have 12 documents, insurance policies,  
19 but no documents.

20 So, for example, a deposition occurred  
21 this week where both the Varsity people were asked about  
22 Charlesbank and Bain in their interactions with them and  
23 what they said. And there was testimony, yeah, Bain did  
24 significant due diligence long in advance of the -- and  
25 I'm paraphrasing, obviously -- long in advance of the

1 purchase.

2 And we had nothing, because we don't have  
3 any documents that we can even look to to begin our  
4 discovery. So we're getting hamstring with the other  
5 defendant depositions.

6 So it's impacting more than just our  
7 ability to prosecute the case against these two  
8 defendants, it's hurting our ability across the board.

9 So I would argue that, one, Judge Lipman  
10 very clearly stated that Fusion and our case are  
11 different. They have different classes. They have  
12 different claims. They're not overlapping. They may be  
13 competing. And that discovery would not be stayed during  
14 the motion to dismiss Practice.

15 So we would appreciate if the Court could  
16 hear argument today, so that we can move forward with  
17 discovery for our case across the board.

18 THE COURT: Okay. Response.

19 MR. KAISER: Yes, Your Honor.

20 First of all, Judge Lipman -- Judge  
21 Claxton did not say anything about the ruling from Judge  
22 Lipman coming down soon. So that's not what she based  
23 her decision on.

24 I would also preface this by saying that  
25 if we're going to -- every time the plaintiffs don't like

1 something that you or Judge Claxton says, we're going to  
2 reargue it three weeks hence. That's not conducive to  
3 getting this case done.

4 Judge Lipman has put us on a very, on a  
5 schedule. And she's made it clear that she wants to move  
6 forward, not constantly revisit things.

7 What Judge Claxton did say, which is  
8 totally correct, is that there are pending motions to  
9 dismiss Bain and Charlesbank. The arguments are exactly  
10 the same. They are based on complaints with pretty much  
11 the exact same foundation, which is true.

12 The distinctions that Ms. Schwarz raised  
13 are not really distinctions. Yes, they're different  
14 employers, that's true. But that's not the point.

15 The point is that Bain and Charlesbank are  
16 the owners, or (inaudible) were the owners of Varsity.  
17 And there is nothing in the complaint to justify holding  
18 them liable for whatever Varsity is said to have done.

19 So that's the same issue in both of them.  
20 We would all like to get these motions to dismiss  
21 resolved, of course.

22 Judge Lipman has done a great job in all  
23 respects, but it takes time to get through these things.  
24 And I expect she will probably rule on these pretty soon.  
25 But then again, I don't really know.



1           As you know this issues of being hamstrung  
2 or whatever, that's really inaccurate. The fact is that  
3 the parties, Varsity and the U.S.A., the parties that  
4 actually were involved in cheerleading have produced an  
5 inordinate amount of materials, including all sorts of  
6 materials that were given to Bain and Charlesbank as the  
7 owners.

8           In addition, there are multiple, probably  
9 more than 10 third parties who have produced thousands  
10 and thousands, and tens of thousands of documents  
11 regarding the purchase of Bain -- purchase of Varsity by  
12 Bain, by Charlesbank, due diligence materials. I mean,  
13 more than you could spend the rest of your life using,  
14 going through, et cetera.

15           So the idea that they don't have this  
16 stuff is just factually incorrect.

17           What we're talking about now is digging  
18 into two guys' files and the emails of two guys, Bain and  
19 Charlesbank, that are probably, almost surely going to be  
20 out of this case, based on what happened with the  
21 American Spirit case, and they should not be subject to  
22 party discovery. It's just that simple.

23           That's what Judge Claxton ruled. And I  
24 would submit to this Court that's what the final outcome  
25 here should be.

1                   And it's just unfair to us to constantly  
2 have to come back and argue these same things over and  
3 over again, deal with the same things over and over  
4 again.

5                   Plaintiffs did not ask Judge Claxton for  
6 time -- they accepted the ruling and moved on. I think,  
7 frankly, when the magistrate change happened, they saw an  
8 opportunity to maybe get a second shot at this and now  
9 here we are.

10                  But I don't think you should give them a  
11 second shot at this. I think we should be done with this  
12 until the motion to dismiss is decided.

13                  THE COURT: Well, there is no motion to  
14 stay discovery as to Charlesbank and Bain, Correct?  
15 Judge Claxton had decided that without a motion?

16                  MS. SCHWARZ: Correct.

17                  MR. KAISER: She decided to set the motion  
18 to compel aside pending the motion to dismiss decision by  
19 Judge Lipman, that's correct.

20                  THE COURT: Right. So effectively staying  
21 discovery as to Charlesbank and Bain. But there was --  
22 just reviewing the docket, there was no motion to stay  
23 the discovery as to those, pending the resolution of  
24 motion to dismiss.

25                  MR. KAISER: Correct.

1 THE COURT: All right.

2 So a few things here. First, is that --  
3 and, perhaps, the judges can differ. But at least for  
4 me, normally I would require the parties to brief a  
5 motion to stay discovery, and even in the situation where  
6 it is just a part of the case, so that the Court can give  
7 both sides advance notice that I'm considering it and an  
8 to opportunity to be heard.

9 Because in this case, if Bain and  
10 Charlesbank, there is no discovery as to them, and if  
11 Judge Lipman -- and I know defense disagrees -- but if  
12 Judge Lipman decides to not grant the motion, and  
13 discovery then is to proceed against them, with everyone  
14 else that's been on board, and having engaged in  
15 discovery, will -- what would Bain and Charlesbank  
16 defendants say at that point?

17 Are they going to ask for a redo for  
18 discovery? Or are they going to accept the discovery  
19 that has been conducted, depositions, and utilize it, and  
20 even if they haven't said -- an opportunity to question  
21 witnesses and participate in meaningful over the next  
22 whatever it is days, weeks, months, until --

23 MR. KAISER: Bain and Charlesbank will not  
24 use that set of circumstances as a reason to redo any  
25 discovery. I can assure the Court of that.

1 In terms of a motion to stay discovery, if  
2 the Court would prefer we file such a motion and brief  
3 that, that would be perfectly fine.

4 THE COURT: Okay.

5 MS. SCHWARZ: Obviously, Your Honor, there  
6 wasn't a motion to stay. And this was not some gotcha  
7 act by us. We had asked for this hearing. And the  
8 change of Magistrate Judge didn't change anything, other  
9 than you put -- you put them back on calendar. And to  
10 us, that meant we were entitled to raise our position  
11 with you.

12 If they get to now file a motion to stay,  
13 it's going to be on the same basis that we just heard  
14 here without, again without -- I can give you our  
15 position on it. But, again, it's just going to delay it.

16 And we have got depositions. And,  
17 frankly, his position that we have the evidence because  
18 other third parties produced documents, you know, we want  
19 it from the defendants we sued. We don't want to go  
20 through the files of people we didn't sue to see what  
21 they have to say about the people we did sue.

22 And they are, in our view, in our case,  
23 Charlesbank and Bain are relevant because we allege that  
24 their acquisitions involve valuation of Varsity. It  
25 involved the markets. It involved the competition. And

1 whether or not they're parties, they have relevant  
2 evidence that, just like in other cases, we'll serve  
3 third party subpoenas and have to get it that way, should  
4 the motion be ruled on.

5               So this is just a -- to me it's a kicking  
6 the can down the road. How much longer can be extend  
7 this without having to participate? Without having to  
8 even participate in meeting and conferring about -- let's  
9 say we win and the Judge does deny the motion.

10              What could we agree to? What could we say  
11 this is what we're going to go forward with, should that  
12 occur? That doesn't require hundreds of thousands of  
13 dollars, as they posit, in discovery. But I just -- it's  
14 very hard to say, sure, let's now brief a motion to stay,  
15 when we've been fighting about this for months and months  
16 and months, and we have nothing to just say, sure, we'll  
17 go with a couple more months of briefing to see whether  
18 or not we can push a discussion forward. Because we  
19 might, we might win, and we might lose, but that's how  
20 this works. And the Judge don't stay discovery simply  
21 because one side thinks that they're certainly right.

22              MR. KAISER: We would be happy to talk to  
23 them about what happens if the motion to dismiss is  
24 denied, that -- that's the first time that's been  
25 proposed.

1           To clarify on what I was talking about,  
2 what else has been produced. What has been produced is  
3 exactly what she says they want, which is the due  
4 diligence materials. That has produced by other parties  
5 had access to them, as I understand it.

6           And so, yes, there is no -- that's not  
7 really, you know, the issue. If they don't want to go  
8 through things that have been produced, that's up to  
9 them, I supposed.

10           The other thing is, Fusion Elite, the  
11 other case, did issue a subpoena to us, to Bain and to  
12 Charlesbank. That subpoena was complied with many months  
13 ago. They have all the documents that were produced in  
14 response to those subpoenas.

15           So, you know, I don't know. This is,  
16 obviously, more, a lot more stuff. Hundreds of thousands  
17 of dollars in additional expense. And, you know, that's  
18 party discovery. And we just don't -- given where things  
19 stand with Judge Lipman on the motion to dismiss, again,  
20 we don't think that's appropriate at this time.

21           We also don't think it's appropriate on  
22 the merits, for many reasons we could -- we got into in  
23 the motion -- in the motion to compel briefing. But at  
24 the threshold, we don't think this should be something  
25 that gets resolved right now because of that.

1 But in terms of talking to plaintiffs  
2 about alternative possibilities if the motion to dismiss  
3 is denied, we would be all, certainly in favor of doing  
4 that.

5 THE COURT: Well, that's the other thing  
6 is, thinking through the different scenarios. Even if  
7 the motion to dismiss were granted against Charlesbank  
8 and Bain, that wouldn't foreclose the plaintiff to obtain  
9 third party discovery through subpoena from your clients.  
10 Would they be entitled to the exact same information that  
11 they're asking for through the discovery request here?  
12 Would it be a narrower set?

13 MR. KAISER: I don't think so, Your Honor,  
14 because what they're asking for here is so beyond what  
15 any third party would ever be compelled to produce in a,  
16 under a Rule 45 subpoena. I don't think it's really --  
17 well, it's completely inappropriate under the Federal  
18 rules as they pertain to parties as well, but it's over  
19 the top inappropriate when it comes to a third party.

20 And, again, they have been subject to  
21 third party subpoenas by Fusion Elite, which, frankly,  
22 sought a lot of the same kinds of things they're asking  
23 for. You know, a certain portion of that was produced  
24 and that resolved it with Fusion Elite. So that has kind  
25 of already played out.

1                   Now they may say, we can issue our own  
2 subpoenas. And I suppose they could. I would remind the  
3 Court, again, that the Judge, Judge Lipman has ordered  
4 these guys to coordinate on discovery. And I guess this  
5 would just be another example where they chose not to.  
6 But, you know, that could be what happens here.

7                   And if it does, it does, but we would have  
8 to take those issues up as they come.

9                   THE COURT: I'll let Ms. Schwarz respond.  
10 Sounds like she wants to respond to some of your  
11 comments.

12                   But ultimately here we're are we if -- I'm  
13 not suggesting that a motion to stay is required;  
14 although, I think, quite frankly, it probably would make  
15 sense for the record.

16                   But insofar as the outcome, if the Court  
17 agrees with Charlesbank and Bain's position that  
18 discovery should be stayed in light of the pending  
19 dispositive motion in the Jones case, coupled with Judge  
20 Lipman's opinion in the American Spirit case, that it  
21 would, from your position, would apply equally to this  
22 case and the complaint, that wouldn't necessarily prevent  
23 the Jones plaintiff from issuing the Rule 45 subpoenas  
24 and getting some information from those defendants that  
25 they might argue would be relevant to this, to the Jones



1 litigation.

2 And if that were the case, would it be --  
3 and it sounds like, and I wasn't aware of this, is that  
4 with Fusion Elite, that -- Mr. Kaiser, your comment was  
5 that their subpoena sought largely the same type of  
6 information that the party discovery that Jones has  
7 served upon your clients in this case is seeking.

8 And if that's the case, and if the  
9 discovery was produced in the Fusion Elite case, and if  
10 that's going to overlap with what Ms. Schwarz had sent to  
11 you for the party discovery, then maybe the issues in  
12 dispute is much much narrower than what has been set  
13 forth in the emails to my chambers.

14 MS. SCHWARZ: Your Honor, if I could,  
15 obviously, respond to that. We disagree. I'm not one to  
16 assume intent by anyone else, so I prefer to just let you  
17 know that in the Fusion litigation, obviously,  
18 Charlesbank and Bain are not defendants.

19 What is sought from them in those  
20 litigations is not what we are seeking in our request for  
21 production of documents in this case.

22 Second, in Fusion they produced 13  
23 documents and 19 documents, respectively. That's it.  
24 That's, that is so wholly insufficient and is not related  
25 to what we are requesting here.

1                   And I think it would be inappropriate for  
2 us to have to argue why we should get documents through a  
3 third party subpoena right now, when we don't have the  
4 benefit of briefing that for Your Honor, to provide you  
5 with the law of what is appropriate and is not  
6 appropriate, and what would be included in a Rule 45  
7 subpoena.

8                   You know, we intentionally crafted our  
9 request to not repeat what was done in Fusion. We aren't  
10 seeking what was done in Fusion. There were no custodial  
11 searches done in Fusion. We weren't involved -- in fact,  
12 their discovery was served before we even had our  
13 complaint on file.

14                   So to say, well, gosh, Fusion did this.  
15 We didn't have any participation in what Fusion did.  
16 Again, it is -- it's a different claim. We have them as  
17 defendants here. And I don't think that just saying,  
18 well, we produced 13 and 19 documents, so you got  
19 everything you can possibly need, it's just not, it's not  
20 reality.

21                   So I would argue that, Your Honor, this is  
22 not something where we can just all sit aside and say,  
23 gosh, go look at everyone's else's documents until a  
24 ruling comes down. We would like to have guidance from  
25 the Court so that the parties can get started. That if

1 the motion goes our way, that we have guidance from the  
2 Court on what that time period is going to look like,  
3 what those custodians are going to look like, what the --  
4 which files are going to be searched.

5 I think these are not issues pertaining to  
6 particularly requests, so much as a broader issue of  
7 what, what this is going to look like.

8 So while I raise the idea that we need to  
9 talk about this, we've been asking to talk about this. I  
10 would say not me personally, so Mr. Kaiser doesn't need  
11 to say, well, I wasn't involved, because it wasn't me  
12 personally over the summer. But our firms have been  
13 communicating about, well, what about these custodians,  
14 what about this?

15 And we have been saying all along, you  
16 know, where can we come to an agreement on something?  
17 And the response is just, no. We'll give you one  
18 custodian --

19 MR. KAISER: Your Honor --

20 MS. SCHWARZ: -- we'll give you a two year  
21 period.

22 So I think it would not do us well to just  
23 walk away from this and say, file a motion to stay, and  
24 then maybe you guys chat, because we're not going to get  
25 anywhere. The position is going to be, we're just going

1 to keep pulling this out until a ruling on the motion has  
2 been handed down.

3 MR. KAISER: Your Honor, I'm sure the last  
4 thing you want on a Friday afternoon is to -- refer  
5 discussions. But it is true that Ms. Schwarz was not  
6 involved in those.

7 The fact is that that the position that  
8 the plaintiffs put out months and months ago in terms of  
9 everything she just talked about, despite many hours of  
10 conversations with them, has never moved one inch.

11 No matter what we say, no matter what we  
12 offer, no matter what we try, it's always been the  
13 day-one position. There has been no negotiating with  
14 these folks.

15 Yes, they get on the phone. But when you  
16 try to talk to them, nothing. We tried to reach an  
17 accommodation with them. They rejected it. They want 17  
18 custodians from these two clients.

19 Let's put that in prospective. In the  
20 Varsity defendants, the Varsity defendants, the people  
21 that actually ran this business that they say, is really  
22 what this case is about, the total number of custodians  
23 is 20. And yet they want 17 from these two, you know,  
24 people who just owned the company during various periods.

25 So, yes, nothing -- we have not been able

1 to reach an kind of conclusion with them, because they  
2 refuse to even consider the fact that they're asking for  
3 way too many custodians, asking for every document about  
4 Varsity. So many problems that are weighted out in the  
5 motion to compel.

6 So I really -- I know judges hate hearing  
7 about this kind of stuff, she said, he said, whatever.  
8 But since it was brought up, I felt I had to, compelled to  
9 respond.

10 They have not moved from their position  
11 one iota as far as I can see in months and months.

12 THE COURT: Okay. So here are some  
13 thoughts. It would seem just initially that, that what  
14 Judge Claxton had -- whether you call it a ruling or  
15 thoughts on the pending motion to dismiss and it's impact  
16 in discovery in this case, I would tend to agree with.  
17 It would appear that the pending motion before Judge  
18 Lipman on the Jones case that relates to Bain and  
19 Charlesbank, the analysis, would -- again, without  
20 briefing from the parties, and that's why I raised it,  
21 would appear to have, as Judge Claxton commented, not  
22 exactly her words, but that it would appear to be  
23 applicable in this case. But again, subject to being  
24 convinced otherwise by the parties through appropriate  
25 briefing on an issue that I do think is important.

1                   Because ultimately, if the Court were to  
2 agree with the defendants and say, okay, what Judge  
3 Claxton says is, appears to be correct, and I would agree  
4 with it, but, ultimately, it wouldn't prevent plaintiffs  
5 any way to -- if there was a stay, it wouldn't be a stay  
6 as to complete discovery for Charlesbank and Bain, but  
7 rather to party discovery, I suppose. In which case they  
8 could then issue subpoenas and proceed that way.

9                   So are we just kicking the can down the  
10 road to where it would be a month from now, which is  
11 these same are before the Court in the form of third  
12 party subpoenas?

13                   And, Mr. Kaiser, you've argued that, well,  
14 it would be over, overbroad and expansive to allow  
15 plaintiffs to take third party discovery against your  
16 clients in a case where -- and let's assume for a moment  
17 they are dismissed. I don't know. I suppose we can  
18 address that at the appropriate time.

19                   But in that situation, maybe you're right,  
20 that there would be a narrower set of documents that  
21 plaintiffs would be entitled to as non-parties.

22                   But then what happens is that later on, if  
23 it turns out that your client ends up being back in the  
24 case, or in the case without being dismissed at all, then  
25 what? The discovery bus has left. Everyone has been

1 involved. And I suppose the plaintiffs would then be  
2 allowed to take party discovery from your client. And  
3 your client would not have participated up to that point,  
4 and, I suppose, run the risk of foregoing opportunities  
5 to attend depositions and to participate.

6 But it sounds like you're okay with that.

7 MR. KAISER: Indeed.

8 THE COURT: What was that?

9 MR. KAISER: Indeed. Yes, we don't have  
10 any concerns on that front.

11 THE COURT: So will it be then the  
12 plaintiffs playing a bit of catch up, get initial  
13 documents that may be they would be entitled to from  
14 party discovery, as opposed to third party discovery?

15 And what I don't know is the difference  
16 between the two in this case, and if there is any  
17 difference. And if there isn't much of a difference,  
18 then we're back to square one; which is, that while there  
19 is a stay, there really isn't a stay.

20 And with everyone else engaging in  
21 discovery, does it just make sense to go ahead and file  
22 forward with discovery against your clients, even though  
23 you've got a good argument that there is similar issues  
24 here, at least to your client, and the applicability of  
25 Judge Lipman's orders.

1 MR. KAISER: Well, I would just say in  
2 response to all that, which is all points well taken. Is  
3 that if it comes to pass that Bain and Charlesbank are --  
4 you know, the motions to dismiss go the plaintiffs way,  
5 yes, that will have to be addressed and we will -- and it  
6 will be.

7 And if that requires a little bit more  
8 time for them to finish up discovery of Bain and  
9 Charlesbank, you know, that's the risk we would be  
10 running, absolutely. And we are more than willing to run  
11 that risk. Because the alternative is right now  
12 spending, as everyone agrees, I mean Ms. Schwarz said  
13 this before, hundreds and hundreds of thousands of  
14 dollars, you know, beating through nine -- sorry, 17  
15 custodian documents, which is what we did in the entire  
16 Varsity case, more or also, the Varsity people, and  
17 spending -- I say hundreds and hundreds, but it's really  
18 a hundred thousand per at least, so we're talking  
19 millions now, that may ultimately and probably will  
20 ultimately prove to be unnecessary.

21 And we're not -- we come back to the point  
22 that these are not the operating parties. These are  
23 people who own the operating parties. Now they have  
24 their theories about how to get them into the case. And  
25 that's fine. That's before Judge Lipman.



1 But at the end of the day, it certainly  
2 does not call for anything remotely -- whether it's a non  
3 party discovery or subpoena, it doesn't -- but even more  
4 so if it's a subpoena -- doesn't call for anything like  
5 what they're asking for.

6 So I would say that we run the risk. If  
7 things don't go our way in the motion to dismiss, we'll  
8 have to come back and deal with this down the road. I  
9 don't think that's kicking the can down the road, so much  
10 as preserving Bane and Charlesbank's rights, and making  
11 sure that we don't end up in a situation where we're  
12 spending millions of dollars on discovery that never  
13 should been taken in the first place.

14 THE COURT: Well, sounds like you agree,  
15 Mr. Kaiser, that regardless, that the discovery is not  
16 going to be stayed completely against your client. That  
17 there needs to be some discovery that your clients, even  
18 in a third party context?

19 MR. KAISER: Well, Bain and Charlesbank,  
20 were subject to subpoena in Fusion Elite and did produce  
21 documents. What they agreed to produce were  
22 presentations that Varsity made or received from Bain and  
23 Charlesbank that the third parties made. To us that  
24 fills the bill.

25 Now there are a lot of other documents

1 that have been produced by Varsity or by third parties  
2 that also, you know, fall into the categories of things  
3 that Bain saw or whatnot and due diligence and all the  
4 issues that Ms. Schwarz referenced.

5 So they have -- I think what has already  
6 been produced pretty much covers the water front on what  
7 would be legitimate, frankly, either in party or in  
8 subpoena. But if there is something in a Rule 45 context  
9 that they think, you know, they haven't gotten, you know,  
10 we can talk to them about that. That's fine.

11 But I don't know see any cause -- in a  
12 party situation and these facts, or, frankly, even more  
13 so in a subpoena situation, to do this kind of massive  
14 ESI, expansive emails and all that kind of discovery,  
15 like they put forward in the motion to compel.

16 So I think it's a qualified, yes, to your  
17 question, but definitely a qualified yes.

18 THE COURT: Okay. Anything further, Ms.  
19 Schwarz.

20 MS. SCHWARZ: I hesitate, because I don't  
21 think this is the appropriate place to argue the motion  
22 to dismiss.

23 But what he keeps saying is, they're not  
24 parties to this, and they're not the real actors. But  
25 that's not what we have alleged. You know, our

1 allegations are that they did. They sit on the board of  
2 directors today making the decisions.

3 When Charlesbank owned Varsity through the  
4 indirect parent, they had requirements that if  
5 acquisitions were going to be made above a certain dollar  
6 threshold, Charlesbank had to sign off on it. They were  
7 not a passive investor. They sit on the board. They  
8 oversee the conduct. Both companies did that, and do  
9 that today.

10 So to say they are just owners is not  
11 true. Again, that's motion to dismiss. That's coming  
12 down the road. But I don't want you walking away from  
13 this with the view that, oh, gosh, these are just big  
14 private equity companies that were kind of tangentially,  
15 so why put them through this. Because that is not our  
16 allegation.

17 Our allegations are that they are actors  
18 in the conspiracy. They are actors that helped to create  
19 this monopoly that is now excluding others from the  
20 market.

21 So I'm not going to repeat everything I  
22 said. I think we should have some guidance on what we  
23 can anticipate receiving. The motion to dismiss is what  
24 it is, but that's not before Your Honor. But, again, I  
25 just -- I can't sit here and say that these are

1 absolutely passive investors that have no part in it.

2           Because while that might have been the  
3 allegations in American Spirit, it is not the allegations  
4 in our case. And as more evidence is coming out and more  
5 is being discovered, we have documents showing that that  
6 is to be true. So I don't think that we should be stuck  
7 in the place of, well, American Spirit didn't do it, and  
8 so that, and Fusion, they're not defendants there, so  
9 they didn't ask same documents you asked for, so you  
10 should have to be just stuck with what others did.

11           MR. KAISER: Well, Your Honor, those are,  
12 in fact, exactly the allegations at American Spirit. So  
13 I don't know what difference is being referred to, but  
14 there is no difference.

15           THE COURT: Okay. And I think repeated,  
16 as said by the parties, that this is not the time or  
17 place to have to hash out those arguments and try to  
18 resolve that.

19           I think what needs to happen is that --  
20 well, a couple of options.

21           First, is the briefing. I hesitate to say  
22 that, because it will delay things. But I don't know  
23 really it's a motion to stay. I suppose it is. But I  
24 think that regardless of what occurs there, it wouldn't  
25 be stayed completely. Whether it be through party

1 discovery or through subpoena, there would be steps that  
2 I think the plaintiffs would be entitled to anyway.

3 Now maybe the scope is affected there  
4 between the two. But I think that there is some amount  
5 of discovery that plaintiffs would be entitled to,  
6 regardless the outcome of the motion to dismiss.

7 So how do we -- what's the most efficient  
8 way of getting that resolved? One is getting the parties  
9 to talk, and then reconvening in a week or so, where  
10 parties can inform the Court about any resolution, with  
11 the understanding -- I think that reading your emails,  
12 that up to now, the defendants have been resisting  
13 having -- I should -- but there has not been fruitful  
14 discussions because of this issue about this stay that  
15 came up with Judge Claxton.

16 And my view is that, I don't necessarily  
17 disagree, but I do think that in the non-party, at a  
18 minimum in the non-party context there would be ways in  
19 which the plaintiffs would be able to get discovery from  
20 the defendants.

21 Now maybe it isn't the number of  
22 custodians. Even in the party context -- I'm not ruling  
23 one way or the other on this, but even in the party  
24 context, perhaps that could be scaled back, regardless of  
25 where Bain and Charlesbank end up in this case, if at

1 all.

2 But maybe there needs to be meaningful  
3 discussions of scaling that back, and the scope of that,  
4 that ESI discovery.

5 So those are my thoughts. I don't think a  
6 complete stay, regardless of what the outcome of the  
7 motion to dismiss, would be appropriate.

8 MR. KAISER: As I said, we're certainly  
9 happy to talk to the plaintiffs. So far they've never  
10 moved off their original position, but maybe that will  
11 change with this guidance. And perhaps some sort of  
12 accommodation can be made.

13 THE COURT: Okay. So not to take up the  
14 time of everyone else, I want to be respectful of their  
15 time, what I'd like to do then is -- I know next week is  
16 a holiday week. But to come back maybe early part of the  
17 following week with those parties who are interested --  
18 and everyone is invited back. You will all get the  
19 invitation, but you don't have to appear if you don't  
20 want to.

21 But for those who have something to say,  
22 and wish to be heard on this, you are welcome to join.  
23 But we will send out another notice.

24 My expectation is that there would be some  
25 type of meaningful discussion between the parties. As I

1 said, the email was sort of here's what we want. And the  
2 other side is not talking to us because they think the  
3 case will be stayed. Here's what we want. That was sort  
4 of the whole thing all the way down the email.

5 So it wasn't really too helpful to me.  
6 Obviously, not that helpful for the parties.

7 MR. KAISER: Can I make one personal  
8 request that that next hearing be the end of next, the  
9 week after next, because we are heading into the holidays  
10 and -- my bigger problem is the clients and forth that.  
11 Also, this case has been moving at a very high rate of  
12 speed, and we -- I personally would prefer not to spend  
13 the Thanksgiving weekend talking about this with the  
14 plaintiffs. I suspect the plaintiffs may feel the same  
15 way; although, they might not want to say it.

16 THE COURT: Are you asking for a resetting  
17 for the end of, end of the following week?

18 MR. KAISER: Yes, sir.

19 THE COURT: Right. So I said Monday or  
20 Tuesday of the week after Thanksgiving, but you're asking  
21 for the following, end of that week.

22 MR. KAISER: Well, you know, that wouldn't  
23 be great for me either. If it's going to involve me, I  
24 really -- it would be much better if it was Monday or  
25 Tuesday of the following week, so whenever that is, the

1 first full week of December.

2 THE COURT: Right. That's what -- right.  
3 So that's Monday the 29th.

4 MR. KAISER: No. I would say one week  
5 hence, so whatever that is. Sixth of December, or  
6 whatever.

7 THE COURT: Well, okay. I see. So you're  
8 saying two weeks from now?

9 MR. KAISER: Yes, sir, that is -- right.

10 THE COURT: Okay. Well, how is that going  
11 to impact the, any of the depositions, discovery, and  
12 other things that parties are trying to achieve in this  
13 and other cases?

14 MS. SCHWARZ: I believe we have  
15 depositions that are occurring. I don't know the whole  
16 deposition schedule, but I know that I'm taking  
17 depositions that week and the following week, I believe,  
18 and the week of Christmas, for that matter.

19 THE COURT: You said that week. You mean  
20 next week?

21 MS. SCHWARZ: Ronnie, you may have to  
22 chime in, because I don't have that calendar. But I  
23 think it's the week of the 6th and the week of the 20th,  
24 I know I have depositions.

25 MS. SPIEGEL: We're able to cover



1 something I think in the first week of December. We  
2 do -- defendants are deposing one of our main plaintiffs  
3 on December 1st.

4 I'm Ronnie Spiegel from the Joseph Saveri  
5 Law Firm on behalf of the Jones plaintiffs.

6 So I know we have the deposition on  
7 December 1st, Your Honor. So I would just respectfully  
8 ask that it be set after that, some time either the 2nd  
9 or 3rd, or perhaps in that first week of December, the  
10 week of the 6th is fine with us as well.

11 MS. SCHWARZ: 6th or 7th work for you, Mr,  
12 Kaiser. Correct?

13 MR. KAISER: Yes, that would be my  
14 preference. Thank you.

15 MS. SCHWARZ: Okay. And I don't want to  
16 be here and then not show up the next time. I'm going to  
17 have to move some things around to make the 6th or 7th  
18 work. So if you don't see me, it's not that I just  
19 bounced. I just may not be able to get out of some other  
20 commitments I've got. But I am sure someone else can  
21 step in.

22 THE COURT: Okay. So how about the 6th,  
23 December 6th, Monday. That gives you two weeks to have  
24 more meaningful discussions regarding the scope of the  
25 discovery here.

1 I floated the idea of the motion to stay.  
2 I suppose I don't want to end this hearing without at  
3 least hearing from the parties about whether they want to  
4 file -- well, I guess, it would be defendant wanting to  
5 file that, to make a record of it. But as I already  
6 indicated, even if I granted, some form of discovery I  
7 think would still have to go forward with it.

8 So make use of your time, but I don't want  
9 to --

10 MR. KAISER: Your Honor, I prefer to  
11 resolve things, rather than stand on ceremony. So, you  
12 know, I hear what Your Honor is saying. And, you know --  
13 so I think we're -- obviously, I represent clients who  
14 may have a different view. But from where I sit know, I  
15 wouldn't anticipate the desire to do that.

16 If something changes, I guess we'll just  
17 file and it will be what it is. But I think right now,  
18 hoping for -- trying to get something on the 6th would be  
19 the most productive path forward.

20 THE COURT: Okay. So the 6th. And I  
21 think some of y'all are West Coast, that's why I set it  
22 for the afternoon. So we can set it for late morning,  
23 Terry, or 1:00 o'clock in the afternoon.

24 THE CLERK: We can do that, Judge.

25 THE COURT: 1:30, set it for that.

1 THE CLERK: Yes, sir.

2 THE COURT: That will be Central Time,  
3 1:30, Monday 6th, for video hearing.

4 And prior to that I would require the  
5 party to meet and confer, to attempt to resolve the  
6 disagreement, and then to provide me by that Friday just  
7 a written update. It doesn't have to be anything fancy,  
8 but just a written update about whether everything is  
9 still on the table or whether y'all have it resolved.  
10 And maybe I'll get good news and that y'all resolved  
11 everything.

12 So let's do that by the 3rd then, close of  
13 business on the 3rd. So just let me know. That will let  
14 me know how to spend the weekend before the 6th. Okay.

15 Then if there is no resolution, or not  
16 complete resolution, then I will take the issues up one  
17 by one, and we'll resolve any disputes on the 6th  
18 regarding the scope of discovery and how to move forward  
19 from here.

20 Then as mentioned, on Monday, if the other  
21 Varsity, that motion, just let me know -- just let me  
22 know what y'all decided. I don't know if they're still  
23 on the call. I can see some of them maybe.

24 MR. KAISER: We will take no one --

25 FEMALE VOICE: We're still here.

1 FEMALE VOICE: We're all still here.

2 THE COURT: So let us know if there is  
3 anything I need to do further on that. Okay.

4 Anything else at this time before we  
5 adjourn and see those who are interested on the 6th, from  
6 the plaintiffs?

7 MS. SCHWARZ: No, Your Honor. Thank you.

8 THE COURT: Defendants?

9 MR. KAISER: No, Your Honor.

10 THE COURT: Okay. All right.

11 MR. GAFFNEY: No, Your Honor. Thank you.

12 THE COURT: Have a good weekend everyone.

13 MS. SCHWARZ: Thank you, Your Honor.

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1 I, Kristi Heasley, do hereby certify that the  
 2 foregoing 52 pages are, to the best of my knowledge,  
 3 skill and ability, a true and accurate unredacted  
 4 transcript from the FTR recording in the matter of:

5 JESSICA JONES, MICHELLE

6 VELOTTA, and CHRISTINA  
 7 LORENZEN on behalf of  
 8 Themselves and All others  
 9 Similarly Situated,

VS

)  
 ) NO.2:20-CV-02892  
 ) JACKSON, TENNESSEE  
 )  
 )

10 VARSITY BRANDS, LLC;  
 11 VARSITY SPIRIT, LLC; VARSITY  
 12 FASHIONS & SUPPLIES, LLC;  
 13 U.S. ALL STAR FEDERATION,  
 14 INC.; JEFF WEBB;  
 15 CHARLESBANK CAPITAL  
 16 PARTNERS, LLC; and BAIN  
 17 CAPITAL PRIVATE EQUITY;

18  
 19 Dated this 3rd of December, 2021.

20 /s/ Kristi Heasley

21 -----  
 22 Kristi Heasley, RPR  
 23 Official Court Reporter  
 24 United States District Court  
 25 Western District of Tennessee  
 Eastern Division